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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVID A. SCHULTZ, CHAD W. KOSTER, and CARY LEEN

Appeal 2014-009415
Application 13/434,783
Technology Center 3700

Before GEORGE R. HOSKINS, LEE L. STEPINA, and ARTHUR M. PESLAK, *Administrative Patent Judges*.

STEPINA, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from a rejection of claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

CLAIMED SUBJECT MATTER

The claims are directed to a user setup for an HVAC remote control unit. Spec. 41 (Abstract). Claim 1, reproduced below, is illustrative of the claimed subject matter:

> 1. A portable wireless device for use in conjunction with a thermostat of an HVAC system, wherein the thermostat is configured to control one or more HVAC components of the HVAC system, the thermostat having a wireless interface, the portable wireless device comprising:
>
> a housing;
>
> a wireless interface secured relative to the housing;
>
> a user interface secured relative to the housing;
>
> a local temperature sensor secured relative to the housing for sensing an ambient temperature proximate the portable wireless device; and
>
> a controller in communication with the wireless interface and the user interface of the portable wireless device, the controller secured relative to the housing, the controller configured to communicate the ambient temperature sensed by the local temperature sensor of the portable wireless device to the thermostat via the wireless interface of the portable wireless device and the wireless interface of the thermostat.

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Morgan	US 6,394,359 B1	May 28, 2002
Wacker	US 7,055,759 B2	June 6, 2006

REJECTION

Claims 1–20 are rejected under 35 U.S.C. § 103(a) as unpatentable over Morgan and Wacker.

OPINION

Claim 1

The Examiner finds that Morgan discloses most of the features recited in claim 1, but fails to disclose communicating a local temperature to a thermostat. *See* Final Act. 2–3. Nonetheless, the Examiner finds that Wacker teaches "communicating local temperature with thermostat in the same field of endeavor for the purpose of control HVAC." *Id.* at 3. The Examiner finds that "Fig. 14J and Table 3 of Wacker disclose the selection of sensor location can either be local or remote." Adv. Act. 2.[1] The Examiner reasons that it would have been obvious "to modify the apparatus of Morgan with a communication of local temperature with thermostat in view of Wacker et al so as to control HVAC using local temperature and providing comfortable level based on the local temperature." Final Act. 4.

Appellants argue that the sensor in Wacker relied upon by the Examiner, sensor 79, is not disposed at the personal digital assistant ("PDA") disclosed by Wacker. Appeal Br. 8. Appellants also assert that "there does not appear to be any disclosure in the cited passages of Wacker [] that an ambient temperature measured at a sensor 79 is inherently[] (i.e. necessarily) communicated to a thermostat in analogy to the claimed operation of the portable wireless device of claim 1." *Id.* at 9. In this regard, Appellants contend that sequencer 78 (which includes sensor 79)

> is not described as a portable wireless device that has a wireless interface and a controller configured to communicate the ambient temperature sensed by the local temperature sensor of the portable wireless device to the thermostat via the wireless interface of the portable wireless device and the wireless

[1] Dated October 2, 2013.

> interface of the thermostat, particularly in combination with the other elements of claim 1.

Id. Appellants also contend that Wacker does not specify which sensors may be selectable by the user interface depicted in Figure 14J of Wacker. *Id.*

In response, the Examiner states that Morgan is relied upon for the temperature sensor located within a remote control, and "Wacker discloses 'local and non-local sensors . . . may be situated in various locations.'" Ans. 6 (quoting Wacker, 34:58–62). The Examiner also finds that the PDA in Wacker is part of an air management system, which may include a temperature sensor. *Id.*

Appellants reply that a person of ordinary skill in the art would not interpret the PDA of Wacker to be part of an air management system. Reply Br. 2–3.

We do not agree with Appellants' arguments on these points. Regardless of whether Wacker teaches *wireless* communication from a remote temperature sensor to a thermostat, a preponderance of the evidence supports the Examiner's finding that Wacker teaches *communication* of a temperature from a remote temperature sensor to a thermostat, and this teaching is sufficient to support the Examiner's rejection. The Examiner finds that Morgan discloses a remote control that provides wireless communication with a thermostat, but that the communication from the remote control to the thermostat in Morgan is lacking because it does not include the local temperature, and the Examiner's use of Wacker remedies this deficiency. *See, e.g.*, Final Act. 3.

As for the communication in Wacker relied upon by the Examiner, we reproduce Figure 14J of Wacker below.

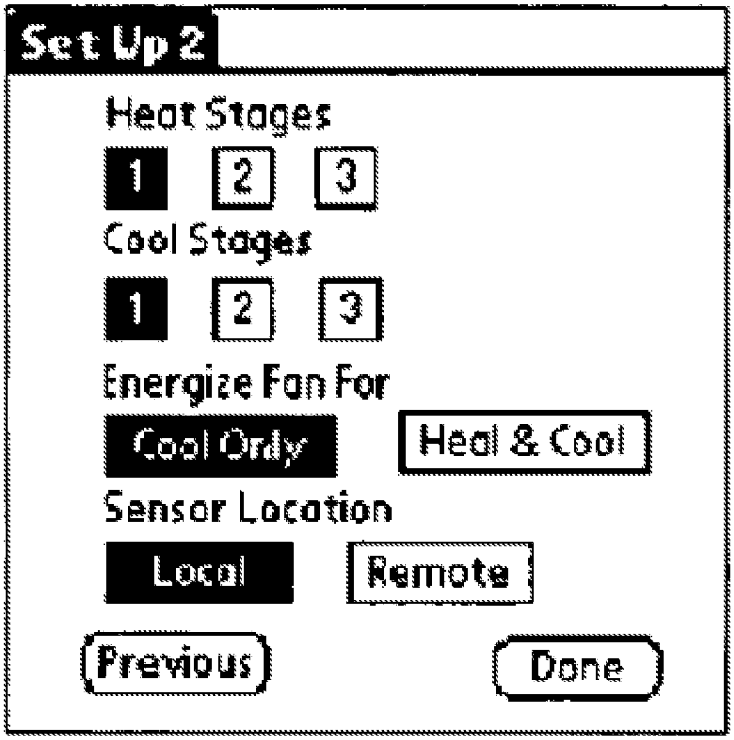

Figure 14J

Figure 14J of Wacker depicts a control screen on PDA 12 of Wacker, e.g., the PALM™, which allows "selecting the heat and cool stages, for energization selection and sensor location." Wacker, 23:59–24:6.

Appellants' contentions that Wacker does not specify that the temperatures sensed by sensor 79 are communicated to a thermostat, and Wacker does not indicate *which* sensors are selectable in the interface depicted in Figure 14J (*see* Final Act. 9), are unpersuasive because only the teaching of communication from a remote temperature sensor to another controller is necessary to support the Examiner's rejection of claim 1 based on Morgan and Wacker. A preponderance of the evidence supports the Examiner's finding that Wacker teaches this feature. *See* Wacker, Fig. 14J;

see also Wacker table 3 (listing "Local sensor only" and "Remote sensor only" as options after the option "Remote space temperature sensor").

Appellants also assert that the Examiner's proposed modification to Morgan "would likely render Morgan's system unsatisfactory for its intended purpose" because this modification "would likely result in confusion at the base unit as to which temperature to control to, with multiple temperatures originating from potentially many remote control units." Appeal Br. 10; *see also* Reply Br. 3.

For multiple reasons, we do not agree with Appellants on this issue. First, claim 1 does not require the option to select from more than one temperature. Rather, claim 1 recites, "[a] controller configured to communicate the ambient temperature sensed by the local temperature sensor of the portable wireless device to the thermostat via the wireless interface of the portable wireless device and the wireless interface of the thermostat." Appeal Br. 19 (Claims App.). The Examiner's proposal is "to modify the apparatus of Morgan with a communication of local temperature with thermostat in view of Wacker et al so as to control HVAC using local temperature and providing comfortable level based on the local temperature." Final Act. 4. Neither claim 1 nor the Examiner's rejection requires multiple choices of the temperature that controls the thermostat. Thus, Appellants' argument that there would be multiple inputs resulting in confusion is not commensurate with the scope of claim 1 or the modification proposed by the Examiner.

Next, assuming for the purpose of argument that multiple temperature inputs were required by the Examiner's proposed combination, Appellants present no persuasive technical reasoning or evidence that the addition of the option to select from more than one input would be so confusing as to render

the device of Morgan unsatisfactory for its intended purpose. Indeed, as shown in Figure 14J of Wacker, selection of a controlling sensor from a plurality of options was practiced in the art.

We have considered all of Appellants' arguments for the patentability of claim 1. However, we sustain the Examiner's rejection of claim 1 as unpatentable over Morgan and Wacker.

Claim 2

Dependent claim 2 recites, "wherein the thermostat is configured to control the one or more HVAC components of the HVAC system using the ambient temperature sensed by the local temperature sensor of the portable wireless device." Appeal Br. 19 (Claims App.).

Appellants argue that Morgan discloses a unit that measures temperature at the base, not at a remote control, and Wacker does not disclose temperature sensors (sensors 79) as part of PDA 12. Appeal Br. 11.

As found by the Examiner (Ans. 8), Morgan discloses a temperature sensor in the remote control. This finding is supported by a preponderance of the evidence. *See, e.g.*, Morgan, 4:31–33. Further, as discussed above regarding the rejection of claim 1, a preponderance of the evidence also supports the Examiner's finding that Wacker discloses transmitting, from a remote sensor, temperature information to another device, as well as providing control based on the information from the remote sensor. *See, e.g.*, Wacker, Fig. 14J, Table 3. Appellants' argument pointing out the deficiencies in each of the references individually does not address the Examiner's proposed combination of these references, which meets all the limitations of claim 2. Accordingly, we sustain the Examiner's rejection of claim 2 as unpatentable over Morgan and Wacker.

Claims 4 and 5

Dependent claim 4 recites:

> wherein the controller of the portable wireless device is configured to present a selection via the user interface to select whether the thermostat is to control the or more HVAC components of the HVAC system using the ambient temperature sensed by the local temperature sensor of the portable wireless device, or to control the or more HVAC components of the HVAC system using the ambient temperature sensed by the temperature sensor of the thermostat.[2]

Appeal Br. 19 (Claims App.).

Discussing claim 4, the Examiner states:

> In regard to claims 4, 5, 9, 10 and 17–20, Referring to Fig. 14J, Wacker [] disclose[s] that Setup 2 may include selecting the heat and cool stages, for energization selection and sensor location, as shown in Fig.14j. Then one may load the program for a particular file, to be for the HVAC system for a particular location, such as a merchant, like "Standard 1", as indicated in Fig. 14k. The configuration for Standard 1 may be downloaded to the respective thermostat 11, as in Fig. 14l. This configuration may also be saved under a file name in Fig.14m.

Final Act. 4. Thus, the Examiner finds the "selecting" feature of claim 4 in Wacker.

Among other assertions, Appellants contend that the Examiner did not set forth any reasoning as to why a person of ordinary skill in the art would modify Morgan "to provide the claimed 'selection via the user interface.'" Appeal Br. 12.

In response, the Examiner supports the findings made in the Final Action with further explanation and stating that it would have been obvious

[2] There appears to be a typographical error in claim 4 in the text "the thermostat is to control *the or more* HVAC components."

to modify the apparatus of Morgan with a temperature sensor on a remote control "to measure the remote local temperature and communicate with the thermostat in order to control HVAC using local temperature and providing comfortable level based on the local temperature." Ans. 9–11.

We agree with Appellants' argument regarding the lack of rationale for providing the "selection" feature in the Examiner's rejection of claim 4. Although the Examiner makes extensive findings, and provides a rationale for communicating a remote temperature to a thermostat, the Examiner has not provided any discussion of why it would have been obvious to provide the additional features recited in claim 4 relating to selection. Accordingly, we are constrained to reverse the Examiner's rejection of claim 4 as unpatentable over Morgan and Wacker. Based on its dependency from claim 4, we also reverse the Examiner's rejection of claim 5 as unpatentable over Morgan and Wacker.

Claims 6, 7, 9, 10, and 17–20

Appellants make the same arguments for claims 6, 7, 9, and 17. *See* Appeal Br. 12–18. For the same reasons discussed above regarding the rejections of claims 1 and 2, we sustain the Examiner's rejection of claims 6 and 7, respectively.

For the same reasons discussed above regarding the rejection of claim 4, we reverse the rejection of claims 9 and 17. Claim 10 depends from claim 9, and claims 18–20 depend from claim 17. Accordingly, we reverse the Examiner's rejection of claims 10 and 18–20 as well.

Claims 3, 8, and 11–16

Appellants make no additional arguments for any of claims 3, 8, and 11–16. Accordingly, these claims fall with respective independent claims 1 and 6.

DECISION

The Examiner's rejection of claims 1–20 is affirmed as to claims 1–3, 6–8, and 11–16, and reversed as to claims 4, 5, 9, 10, and 17–20.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART